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Statute:

[TEX. TRANSP. CODE ANN. ch. 227, 361 and 370](#)

Summary:

Allows TxDOT, the Texas Turnpike Authority, and Regional Mobility Authorities to accept solicited and unsolicited proposals for PPPs. Pending legislation (H.B. 2702) would require a popular vote for any conversion from free lanes to tolled. The bill also would limit toll franchises to 50 years.

Key Elements of Texas's PPP Enabling Legislation

Last Updated: September 2005

No.	Issue:	Short Answer:	Sample Provision:
1.	Does the relevant law allow solicited and unsolicited proposals for PPP projects?	Yes.	§361.3022(a) for turnpike projects. §370.306(a) for regional mobility authorities (RMAs). §227.023 for Trans-Texas Corridor (incorporates comprehensive development agreement powers under Ch. 361).
2.	Does the relevant law permit local/state/federal funds to be combined with private sector funds on a PPP project?	Yes.	§361.301(b) for turnpike projects. §361.3021 limits public funds (other than loans, bond proceeds or facility revenues that are deposited in the state highway fund) in a federal fiscal year to 40% of the obligation authority under the federal-aid highway program; public funds for rail projects are limited to \$25M per year. §222.074 permits SIB loans to be made to private parties.
3.	Who has rate-setting authority to impose user fees and under what circumstances may they be changed or otherwise reviewed?	By Contract.	§361.305 CDA shall include reasonable methods to determine and classify toll rates.
4.	Does the relevant law permit TIFIA loans to be used on PPP projects?	Yes.	
5.	Is the number of PPP projects limited to only a few "pilot" or "demonstration" projects?	No.	
6.	Are there restrictions concerning the geographic location of PPP projects?	No.	§361.305(c) project must be identified in the department's unified transportation program or is located on a transportation corridor identified in the statewide transportation plan.

7.	Are there restrictions concerning the particular mode of transportation eligible to be developed as a PPP project (e.g., truck, passenger auto, freight rail, passenger rail)?	No.	For RMAs see §370.0003(14) definition of "transportation project." For Trans Texas Corridor, see §227.001(4) "facility."
8.	Is there a legal requirement to remove tolls after the repayment of project debt?	No.	
9.	Does the relevant law permit the conversion of existing or partially constructed highways into toll roads?	Yes.	§362.0041(a).
10.	Is there a restriction that prevents the revenues from PPP projects from being diverted to the state's general fund or for other unrelated uses?	Yes.	For RMAs, excess revenues are to go to other transportation projects. §370.172(h), or goes to Texas Mobility Funds. §370.174.
11.	Is prior legislative approval required when an individual PPP proposal is received?	No.	
12.	Are there any similar requirements that subject the PPP proposal or the negotiated PPP agreement to a local veto?	No.	
13.	Does the relevant law permit all kinds of procurements for PPP project delivery? These might include, for example, calls for projects, competitive RFQ and RFPs, qualifications review followed by an evaluation of proposer concepts, use of design build, procurements based on financial terms such as return on equity rather than on price, long-term asset leases for some period of up to 60 years or longer from the time operations commence?	Yes.	
14.	Are there explicit exemptions/ supplemental procurement authority from the application of the state's general procurement laws?		
15.	Does the relevant law authorize the public sector to grant long-term leases/franchises for the construction, operation and maintenance of toll facilities?	Yes.	§361.302 authorizes "comprehensive development agreements." §227.082 authorizes franchises and licenses for TTC.
16.	Does the public sector have the authority to issue toll revenue bonds or notes?	Yes.	§361.171 Texas Turnpike Authority can issue turnpike revenue bonds. §370.111 RMAs can issue bonds.
17.	Does the public sector have the authority to form nonprofits and let them issue debt on behalf of a public agency?	No specific provision.	
18.	Does the relevant public agency have the authority to hire its own technical and legal consultants?	Yes.	§370.304(c) for RMAs.
19.	Does the relevant law permit the public sector to make payments to unsuccessful bidders for work product contained in their proposals?	Yes.	§361.3022(m) for turnpike projects. [good model provision]; also §361.306.

20.	Can the agency charge application fees to offset its proposal review costs?	Yes.	§361.3022(l) for unsolicited proposals.
21.	Does the relevant law allow adequate time for the preparation, submission and evaluation of competitive proposals? Note that the agency should have the authority to establish these deadlines on a case-by-case basis depending on the complexity and scope of the initial proposal or other factors that might promote competition (e.g., more review time during holiday periods).	Yes.	§361.3022(c) for turnpike projects - no limit on time for response. §370.306 for RMAs.
22.	Is the public sector required to maintain comparable non-toll routes when it establishes new toll roads?	No.	
23.	Are there any non-compete clause prohibitions?	No.	
24.	Is the authority to enter into PPPs restricted to the state DOT or state turnpike authority or may regional or local entities also do so?	Regional mobility authorities have similar powers.	Chapter 370.
25.	Does the relevant law specify evaluation criteria for PPP proposals received under a given procurement approach?	No.	§361.306 criteria relating to qualifications and award of contracts to be specified in department rules.
26.	Does the relevant law specify the structure and participants for the review process involving PPP proposals?	No.	
27.	Does the relevant law protect the confidentiality of PPP proposals and any related negotiations in the period prior to execution of the PPP agreement?	Yes.	§361.3023 for turnpike projects provides no disclosure of proposal prior to final contract execution except location and scope of project and proposer's qualifications. 370.307 for RMAs
28.	Does the relevant law provide for the ability of the public sector to outsource long-term operations and maintenance and other asset management duties to the private sector?	Yes.	§361.302(a) for turnpikes. §370.181(b)

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